

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

U.S. BANK TRUST, N.A., AS TRUSTEE, )  
FOR LSF9 MASTER PARTICIPATION )  
TRUST, )  
Plaintiff, )  
v. )  
JAMES S. DICKEY, ENDEAVOR CAPITAL )  
FUNDING LLC f/k/a CAPITAL TRUST )  
FUNDING LLC, and UNITED STATES OF )  
AMERICA, )  
Defendants. )  
JAMES S. DICKEY, )  
Counterclaim )  
Plaintiff and )  
Third-Party )  
Plaintiff, )  
v. )  
U.S. BANK TRUST, N.A., AS TRUSTEE, )  
FOR LSF9 MASTER PARTICIPATION )  
TRUST, )  
Counterclaim )  
Defendant, and )  
497 E. 4TH STREET LLC, and ANDREW )  
SCHENA, )  
Third-Party )  
Defendants. )  
Civil Action  
No. 17-10009-PBS

## ORDER OF DISMISSAL

November 20, 2017

Saris, C.J.

## BACKGROUND

Plaintiff U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust ("U.S. Bank"), filed this interpleader action (Docket No. 1-3) in Suffolk County Superior Court, pursuant to an order by the Boston Housing Court. U.S. Bank sought to have the state court decide the rights of Defendants James S. Dickey, Endeavor Capital Funding LLC f/k/a Capital Trust Funding LLC ("Endeavor Capital"), and the United States of America with respect to \$440,893.64 in surplus funds from a foreclosure sale. On January 4, 2017, Defendant United States of America removed the case to this Court. Dickey then filed a counterclaim against U.S. Bank and a third-party complaint against 497 E. 4th Street LLC and Andrew Schena (Docket No. 23). A hearing on the pending motions was held on November 20, 2017.

## ORDER

This interpleader action is DISMISSED WITHOUT PREJUDICE. The Court has not addressed the case on the merits. However, based on the parties' representations at the hearing, Defendants' individual claims to the surplus funds do not exceed \$440,893.64. An interpleader action is not appropriate under these circumstances where the claimants are not adverse. See Hudson Sav. Bank v. Austin, 479 F.3d 102, 107 (1st Cir. 2007) ("[I]nterpleader is not available unless the defendants' claims are 'adverse' to each other." (citation omitted)); see also

State Farm Fire & Cas. Co. v. Tashire, 386 U.S. 523, 537 (1967)

(noting that "federal interpleader was not intended to serve the function of a 'bill of peace'"). For this reason, all claims and counterclaims in this action are **DISMISSED WITHOUT PREJUDICE**.

SO ORDERED.

/s/ PATTI B. SARIS

Patti B. Saris

Chief United States District Judge